

In re ) Fair Hearing No. 9092  
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Appeal of )

The petitioner appeals the decision of the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

1. The petitioner is a 43-year old man who has a ninth grade education and a vocational background as a truck driver and farm laborer.

3. Because of these complications, the petitioner was advised to get employment that did not involve so much walking. In 1986, the petitioner switched from farm work to truck driving.

4. In March of 1988, the petitioner's diabetes went out of control and an ulcer developed in his right foot. His condition worsened and by June of 1988, he was no longer

able to work.

5. In July of 1988, the petitioner was hospitalized for diabetic ketoacidosis and surgery was performed on his foot. His foot apparently was healing well and in September he began to walk on it again. However, by late September, it became reinfected and he was readmitted for surgery. After this surgery, his foot became reinfected again and he underwent surgery a third time on October 26, 1988. This third surgery was successful and while the patient initially was restricted to elevating his feet and then walking on crutches, by the end of November his foot was described by his physician as "looking great" and he was allowed to use it again.

6. On discharge from the hospital, the petitioner was prescribed several medications to control his medical conditions. There is no evidence that the patient's medical problems have resulted in any significant functional restrictions since December of 1988.

7. The evidence clearly shows that from at least July 1, 1988 through November 30, 1988, the petitioner was unable to work at any job because of his physical restrictions. However, it cannot be found that the petitioner was unable to work after December 1, 1988 due to his medical problems.

8. The petitioner had at the time of the hearing in this matter, on April 11, 1989, returned to work. He does not assert this his disability lasted for twelve months and took this appeal because he was required to do so by the

hospital which treated him as a condition to obtaining financial assistance with his hospital bills.

ORDER

The Department's decision is affirmed.

REASONS

Medicaid Manual Section M 211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which existed in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

Even if it were found that the petitioner's impairments kept him from engaging in substantial gainful activity, it cannot be found that his impairment is expected to result in death or last for a continuous period of not fewer than twelve months. By the time of the hearing in April of 1989, the petitioner himself admits that he had recovered and returned to work for some time prior to April, a period which is less than twelve months from the date of onset in July of 1988. Therefore, it must be concluded that the petitioner does not meet the definition of disability found in the Medicaid Regulations.

The petitioner took time off from his employment and came to this hearing knowing he was ineligible, solely

because the hospital which had treated him required him to go through this pointless appeal. The petitioner understood why he had been found to be ineligible and was somewhat embarrassed at the whole process. Well-informed hospital staff should have known that no one with a short term disability (less than 12 months) is going to be found eligible for Medicaid, which is a program specifically designed for long-term medical problems.

To require an appeal as a condition to private assistance programs in an instance like this is a waste of both the applicant's time and money and the state's resources. It is hoped that in the future the hospital will not abuse their patients and the Vermont Medicaid process by requiring the filing of futile and frivolous appeals as a condition to getting assistance with bills.

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